IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13196 of 2004

Between:

K.P.V. Balaji, S/o Satyanarayana, Hindu,
R/o Door No. 10-551, Eshwar Nagar, Ramanaiahpet (V), Kakinada Rural Mandal, East Godavari District.

..... PETITIONER

AND

1. Government of Andhra Pradesh, Rep. by its Secretary, Panchayat Raj Department, Secretariat Buildings, Hyderabad.
2 The District Collector (Panchayat Wing) East Godavari District, Kakinada.
3 The Divisional Panchayat Officer, Kakinada.
4 The Mandal Revenue Officer, Kakinada Rural Mandal, Kakinada, E.G. District.
5 The Mandal Parishad Development Officer, Kakinada Rural Mandal, Kakinada, E.G. District.
6 The Panchayat Secretary, Ramanayyapet Village, Kakinada Rural Mandal, Kakinada, E.G. District.
7 State Election Commission, rep. by its Secretary, 3rd Floor, Buddha Bhavan, M.G. Road, Hyderabad - 500 003.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, particularly one in the nature of a Writ of Mandamus, declaring that the respondents are not entitled to conduct the elections for 18th Ward of Ramanayyapet Village, Kakinada Rural Mandal, East Godavari District in pursuance of the Election Notification No. 84/SEC-B2/2004-2 dated 20-7-2004 declaring the action of the respondents as illegal and ultra vires to the provisions of Article 14 of the Constitution of India and also the provisions of the A.P. Panchayat Raj Act and the Rules framed there under on the subject from time to time.

Counsel for the Petitioner: MR.V.S.R.ANJANEYULU

Counsel for the Respondents 1 to 5: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.6: Mr.D.SRINIVAS

Counsel for the Respondent No.7: Mr.K.G.K.PRASAD

The Court made the following :

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ORDER:

The petitioner is a resident of Eshwar Nagar, Ramanaiahpet Village, Kakinada Rural Mandal, East Godavari District. In the elections held some time back, he was elected as Member of 16th Ward of the said Gram Panchayat. It appears, a person, who was elected as Member of 18th Ward died resulting in casual vacancy. The State Election Commission, seventh respondent herein by Notification dt.20.7.2004 issued Election Notification under Article 243K of the Constitution of India read with Sections 13(2), 14(2) and 201 of A.P.Panchayat Raj Act, 1994 (for short, the Act) notified elections to Gram Panchayats having vacancies in the Offices of Sarpanchs/Ward Members. Ramanaiahpet is one such place where a casual vacancy arose due to reasons aforementioned. This Notification is assailed in the Writ Petition.

It is the case of the petitioner that electoral list for the election to 18th Ward of the Gram Panchayat has not been prepared in accordance with law. According to the petitioner all the voters included in 18th Ward from Sl.No.13516 to 14178, i.e., 662 voters are left out voters and that they are voters taken out from Ward Nos.16 and 17. It is also the case of the petitioner that voters' list is not prepared in accordance with Section 11 of the Act and that there was no proper publication of the electoral list.

Learned counsel for the petitioner, Sri V.S.R.Anjaneyulu, apart from raising contentions as above, also submits that there is statutory violation in the preparation of voters' list and therefore Writ Petition would lie. I am afraid, I cannot agree with the submission.

It has been repeatedly held by a catena of decisions of the Supreme Court that ordinarily election process cannot be challenged in Writ Petition, especially after issue of Election Notification. In Writ Petition Nos.22277 and 22293 of 2003, dt.29.10.2003, I have referred the decisions of the Supreme Court as well as this Court in ***N.P.Ponnuswami v. Returning Officer***, ***Meghraj v. Delimitation Commission, P.Mastanaiah v. Delimitation Commissioner, New Delhi***, ***Pradhan Sangh Kshetra Samiti, Jabalpur v. State of U.P, State of U.P. v. Pradhan Sangh Kshetra Samiti, Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman, Gujarat University v. N.U.Rajguru, Anugrah Narain Singh v. State of U.P.*** , and ***C. Subrahmanyam v. K. Ramanjaneyulu,*** and summarized the principles governing the judicial review under Article 226 of the Constitution of India in election matters as under:

i. If the election law creates rights and provides for enforcement by a Special Tribunal, ordinarily, a Writ Petition cannot be maintained questioning election process including

preparation of voters' list.

ii. When an election dispute is considered, it must be kept in mind that the right to vote, contest or dispute the election is neither fundamental right nor a common law right, but is a right regulated by statutory provisions. It is therefore not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by-passing the machinery designated by the relevant Act. Ordinarily, the remedy provided by the Statute must be followed before the authority designated therein.

iii. When the election process is set in motion by issuing election notification, all the disputes including illegalities, irregularities and improprieties allegedly committed by the election authorities in preparing the voters list, conducting elections, counting votes, etc., should be brought before a Special Tribunal by means of an election petition and Writ Petition is not proper remedy.

iv. In exercise of powers under Article 226 of the Constitution this Court cannot ordinarily interfere in election matters whatever be the illegality alleged when once the election process is commenced by issuing a direction to include the names of certain voters, delete certain voters and/or undertake the exercise of preparation of voters list afresh.

v. Even if the claims and objections by prospective voters are not finally disposed of and even if the objections are justified as to the allegations and contraventions of law, still the election process cannot be arrested. The elections must be allowed to go on on the basis of electoral list which is in force on the date of making nominations;

vi. Even if there is non-compliance with the provisions of the Act, Rules or Orders made under the Act, the dispute has to be brought before the duly constituted Election Tribunal. Even in such an event, the Election Tribunal can interfere with the result of the election only when it materially affects the result of the returned candidate.

Insofar as the submission that Writ Petition would lie when there is statutory violation is concerned, the same is no more *res integra*. In ***C. Subrahmanyam v. K. Ramanjaneyulu*** (supra), the Supreme Court considered this aspect of the matter and laid down as under:

The impugned order was made by the High Court in a writ petition under Article 226 of the Constitution of India filed to challenge an order directing repoll made during the process of election. The first question was whether the writ petition should have been entertained in view of the remedy of election petition under the Act. The High Court took the view that the main point for decision was whether the order directing repoll is in violation of Section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. Having taken this view, the High Court proceeded to say that a

reference was made to a provision of the Constitution in that order and, therefore, the writ petition would lie and the impugned order was quashed for violation of Section 231 of the Act.

In our opinion, the main question for consideration being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside resulting in dismissal of the writ petition. No costs.

Therefore, the Writ Petition is not proper remedy, especially when election notification is already issued. It is, however, open to the petitioner to avail the remedy available under the A.P.Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 framed under Section 233 of the Act, if so advised.

The Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

28.7.2004

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Copies To:

1. The Secretary, Panchayat Raj Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 The District Collector (Panchayat Wing) East Godavari District, Kakinada.
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Kakinada, E.G. District.
7 The Secretary, The State Election Commission, 3rd Floor, Buddha Bhavan, M.G. Road, Hyderabad - 500 003.

8. Two CCs to GP for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad (OUT).

9. Two CD copies.